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STATE OF MICHIGAN

IN THE 17TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF KENT
FAMILY DIVISION

CLAIRE EVELYN RYAN,

Plaintiff,

vs.

Case No. 01-09528-DZ

TIMOTHY J. RYAN and
CHRISTINE RYAN,

Defendants.

/

MOTION FOR DISQUALIFICATION

BEFORE THE HONORABLE PATRICIA D. GARDNER, PROBATE JUDGE

Grand Rapids, Michigan - Wednesday, October 17, 2001

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NO EXHIBITS		

1 Grand Rapids, Michigan

Wednesday, October 17, 2001 - 10:14 a.m.

3 THE CLERK: All rise, please.

4 THE COURT: Please be seated.

5 THE CLERK: Good morning, Judge Gardner.

6 THE COURT: Good morning.

7 THE CLERK: Today we're here in the matter of Claire
8 Evelyn Ryan, Plaintiff, versus Timothy J. and Christine Ryan,
9 Defendants, Case No. 01-09528-DZ.

10 Present in the courtroom today is Timothy J. and
11 Christine Ryan, Defendants; Attorney Mary Benedict,
12 representing the Plaintiff; Attorneys Jon March, Thomas Saxe,
13 and Connie Thacker, representing the Defendants.

14 THE COURT: Thank you and good morning.

15 Today was an adjourned hearing that was scheduled to
16 consider a motion for records, a motion to place the minor
17 child in Michigan, and a motion to dismiss filed by the
18 parents.

19 It was also a time to allow the Court to consider the
20 report of the guardian ad litem in the context of these
21 motions.

22 Yesterday, the Court received a Motion to Disqualify
23 this judge that was requested to be heard today at ten o'clock.
24 And the Court will entertain that motion, if there's no
25 objection.

1 MS. BENEDICT: Your Honor, as -- as this Court is
2 fully aware, I was out of town from last Thursday, and I was
3 scheduled to return yesterday. I did change my flights and I
4 came back Monday night.

5 I did see the motion yesterday at my office. I have
6 not had a chance to prepare for that motion or to even get
7 countering affidavits in that motion.

8 If this Court -- it's not timely filed. Mr. Saxe,
9 certainly, has known of any -- any issues in regards to this
10 for -- for well over a week. If something was going to be
11 filed, it could have been filed with appropriate notice and
12 appropriate time to respond.

13 If this Court is entering -- inclined to hear this
14 motion today, then I will -- will argue it. But I'm not as
15 prepared for it as I would be had I had adequate notice for it.

16 Thank you.

17 THE COURT: The Court would be inclined to consider
18 the motion.

19 This case, although there is a need to move quickly
20 to make decisions, has been stymied with delays, including this
21 last-minute filing of a Motion to Disqualify.

22 To further delay the matter, I think, would be
23 inappropriate.

24 I do notice that I have a youngster in the courtroom
25 who is a school-ager. Who is the youngster in the courtroom?

1 MRS. RYAN: Those three children are our other
2 children.

3 MR. RYAN: They're our children.

4 THE COURT: All right. Is there a reason that
5 they're not in school today?

6 MR. RYAN: We had a long talk last night about that,
7 and it was my inclination not to bring them here, but they
8 convinced me that it was important for them to be here.

9 THE COURT: I would prefer that the children -- this
10 is an adult matter. This is not an evidentiary hearing where
11 any child will testify. It is the Court's strong preference
12 that the children be excused. All minor children be excused
13 and be asked to sit in the lobby.

14 (At 10:17 a.m., children exit courtroom)

15 THE COURT: Who will argue the Motion for
16 Disqualification?

17 MR. MARCH: Your Honor, I will.

18 I'm Jon March. I filed an appearance as co-counsel
19 for Defendants.

20 THE COURT: Yes.

21 MR. MARCH: And at the outset, let me say, we are --
22 we are not making any contention that the notice of this
23 hearing was timely.

24 Ms. Benedict said the motion itself was not timely
25 and, in fact, it was. It was filed with the court and service

1 was made on Monday the 15th, which is within the 14-day period
2 specified by the rule.

3 I don't know that there is any contention otherwise.

4 You indicated that you -- your Honor had received it
5 yesterday.

6 THE COURT: That's correct.

7 MR. MARCH: I -- I believe that it was filed on
8 Monday.

9 THE COURT: Perhaps. The Court received it
10 yesterday. My -- my judge's copy. It was made known to me
11 that it had been filed yesterday.

12 MR. MARCH: All right. I -- I believe that we do
13 have a stamped copy indicating that it had been filed on the
14 14th. So --

15 THE COURT: Very well.

16 MR. MARCH: -- I -- I only raise that so that, in my
17 opinion, the timeliness under the court rule is not an issue
18 here.

19 And the Court has already stated its preference that
20 we proceed to have this heard, and I'm prepared to argue it.

21 THE COURT: You may.

22 MR. MARCH: And -- and I will commence.

23 The basis for our motion is that there is an
24 appearance of bias and prejudice by the Court.

25 The Defendants, in their papers, have made no

1 contention that the Court is actually biased and prejudiced.
2 We have no basis for looking into the Court's mind on that
3 fact.

4 But we do contend and contend strongly, that there
5 has been an appearance of bias that had been -- has been
6 created by what are largely undisputed facts.

7 And the law that we've cited in our brief is clear
8 that an appearance of bias is sufficient grounds to disqualify
9 a judge.

10 And we believe that should happen because what has
11 occurred here goes to the integrity of the judicial process.
12 The -- the facts are, in my opinion, largely undisputed.

13 There was a complaint that was filed in this matter.
14 The complaint, on its face, raises questionable causes of
15 action.

16 At the same time the complaint was filed, there was a
17 motion for an ex-parte order.

18 To the best of the Defendants' knowledge, the
19 complaint was not verified, there was no accompanying
20 affidavit, there was no sworn testimony to support the
21 complaint or the ex-parte motion that was before the Court.

22 If there is such sworn testimony or sworn affidavits,
23 the Defendants have never seen them.

24 The Court, nevertheless, entered an order, an ex-
25 parte order. The order on its face says that it's based on a

1 verified petition and affidavit. Why it says that if, in fact,
2 there was none, we don't know.

3 On October 1st, accompanying an amended complaint and
4 an amended motion for an order, we received an affidavit from
5 Ms. Adele McGinn-Loomis. That affidavit, although not received
6 by the Defendants until October 1st, was dated September 20.

7 The last paragraph of that affidavit says that this
8 information in the affidavit was verbally provided to Your
9 Honor, and given the date of that, September 20th, one day
10 after the complaint had been filed, and one day after the ex-
11 parte order had been entered, it is a reasonable presumption to
12 conclude that that information had been provided on the 19th,
13 at or about the time that the ex-parte order was entered.

14 In a conversation that Mr. Saxe, co-counsel, had with
15 the -- Attorney Mary Benedict, representing the Plaintiff,
16 Ms. Benedict indicated to Mr. Saxe that it had been Ms. McGinn-
17 Loomis who had provided the information to the Court. And
18 there is an affidavit on file from Mr. Saxe to that effect.

19 Such an ex-parte communication is clearly
20 inappropriate.

21 In this particular matter, Ms. McGinn-Loomis is not a
22 bystander, she's not a -- a -- not a disinterested witness.

23 As the affidavits that we presented from Mr. and Mrs.
24 Ryan and others indicate, Ms. McGinn-Loomis is a central player
25 in this whole episode involving the Ryan family in a very

1 essential way.

2 Ms. McGinn-Loomis is also an employee of this court.

3 In that position, she has what I will call back-door
4 access to the court in a way that some other person on the
5 street would not have.

6 You put that fact together with the fact that she's
7 an interested party, and that she provides an affidavit, the
8 affidavit itself contains several paragraphs that are
9 pejorative to the Ryans. And -- and the evidence that we have
10 that that was submitted to the Court, together with the
11 evidence that there does not appear to have been any sworn
12 testimony to support the Court's issuance of the ex-parte
13 order, and all of that together creates an appearance of bias
14 and an appearance of impropriety.

15 None of us know what, in fact, Ms. McGinn-Loomis may
16 have said to the Court. The affidavit says the information
17 above was presented. It doesn't say that anything else was
18 presented and that, of course, is the whole problem with ex-
19 parte communication is that no one really knows what went in to
20 the Court's mind, what is in the Court's mind in terms of the
21 Court's ability to hear the matter impartially without any bias
22 and without any prejudice.

23 As I stated at the outset, we do not know if that
24 actual bias or prejudice exists.

25 But without any question, there is an appearance of

1 such impropriety. And that appearance here is made more strong
2 and -- and creates an even greater undermining of the judicial
3 process when it is coupled with the fact that Ms. McGinn-Loomis
4 has told the Ryans -- or Mr. Ryan on an -- a separate occasion,
5 that she is willing to use her influence with the -- with the
6 Court, and that she has told the Plaintiff in this case that
7 that's what she would do.

8 Whether, in fact, she has any influence with the
9 Court, we don't know.

10 But, in fact, she has engaged in activity which is
11 inappropriate and which we respectfully submit, your Honor,
12 creates such an appearance of bias and prejudice, as well as
13 impropriety, that the only thing for this Court to do is to
14 disqualify itself from further proceedings and to transfer this
15 case to another judge.

16 And we respectfully request that that be the result.

17 THE COURT: Thank you.

18 Ms. Benedict, do you wish to make any argument?

19 MS. BENEDICT: Your Honor, first off in regards to
20 service of the -- the motion. It was served at my office at
21 4:50 p.m. on Monday afternoon.

22 So, yes, it was filed on -- or apparently at least
23 served in my office by the end of the business day, barely, on
24 Monday.

25 I'd like the -- the record to reflect that.

1 Your Honor, also, I would like the record to reflect
2 that Mr. Saxe informed me well over a week ago when we talked
3 about this issue, that he was not going to file a Motion for
4 Disqualification because he felt that you were not biased and
5 that you could hear this motion -- or hear this -- this case.
6 And that he felt you were a fair judge.

7 So I find it interesting that on the eve of further
8 court proceedings and after the Court of Appeals denies a leave
9 for appeal and -- and a stay of proceedings, that then this
10 motion is filed.

11 It -- it just seems to me that there's some judge
12 shopping going on. They don't like that -- that things aren't
13 -- haven't necessarily gone their way, not that anything's
14 really happened yet. So they want to see if they can get a
15 better result with somebody else.

16 I -- I'm sorry, I don't think we use the court system
17 that way.

18 Your Honor, I -- I -- I do not believe this Court is
19 biased. Certainly, I don't believe there's even been an
20 appearance of bias.

21 This issue came as a result of calls that Ms. -- that
22 my client, Ms. Ryan, made asking for help. We were under --
23 under a -- literally a gun of trying to get help and prevent
24 her from getting on an airplane.

25 We were trying to do that. I was trying to get

1 paperwork done to help my client.

2 I spoke with this Court, as this Court knows, in an
3 effort of trying to streamline and get paperwork done.

4 Ms. Loomis provided information because she had the
5 information because Ms. Ryan called her asking for help.

6 I had previously spoken to Ms. Ryan. But she is the
7 -- the person that Ms. Ryan called begging for help and the
8 phone went dead in that conversation.

9 Your Honor, the information that she provided is what
10 is spelled out in that affidavit. I provided that affidavit --
11 we drafted that so that there was no problem, the record was
12 clear on what occurred.

13 I think that that was an appropriate thing to do.
14 And, certainly, everyone was fully aware of that. There was no
15 -- no hidden agenda by anybody.

16 The fact that she works for the court doesn't give
17 her any influence. She doesn't work for Your Honor, she works
18 in the court clerk's office. She's not in your courtroom on a
19 regular basis. She's not even in a courtroom. She's in the
20 court clerk's office. She accepts documents, she does filing,
21 she does what the court clerk's office does.

22 I don't believe that she has any control. I don't
23 think anybody in the court's clerk's -- court clerk's office
24 has control over the judges, over the staff of the judges.
25 Certainly, I've never witnessed anything to that effect.

1 And if we follow that line of reasoning, well, then
2 nobody in Kent County can hear this case because of her working
3 at the court, as well as the fact that Mr. Ryan is an attorney.
4 Well, then, who can hear the case? I mean, if we're following
5 their line of reasoning that the fact that somebody's a court
6 employee that's a potential witness in a case, dis --
7 disqualifies a judge, well, then, we've got the same problem
8 with Mr. Ryan and -- and then where do we go?

9 Your Honor, quite frankly, I think that what they're
10 trying to do is just overwhelm us with paperwork, and the --
11 and the personal attacks. The -- the running around town
12 spreading personal attacks about myself, as well as other
13 persons involved in this case, all that is is an effort to try
14 to get us to walk away from the case.

15 And, quite frankly, I've been at the point where I've
16 almost gone -- I've almost walked away. But I can't do that
17 for my client. This client -- this case is about a soon-to-be-
18 17-year old girl and what's in her best interests. And -- and
19 what -- what are her needs and what are her rights. That's
20 what this case is about.

21 And I think that we need to keep that in focus. And
22 I believe that this Court can do that.

23 Your Honor, I don't believe, again, that there is any
24 influence. Certainly I haven't been able to respond to these
25 self-serving affidavits that are part of this case -- that have

1 been filed as part of this motion.

2 I would certainly like to submit that those
3 affidavits certainly try to spell out Mr. Ryan's position.

4 Your Honor, it -- it's frustrating to me. But, your
5 Honor, I think we need to keep the focus on what's best for
6 this child.

7 And -- and I believe that this Court is not biased
8 and that this Court is willing to hear all of the evidence in
9 this case.

10 This Court appointed a GAL to investigate it and to
11 look into this matter. I think that that certainly is an
12 appropriate step. Certainly something I wanted to see happen.

13 That GAL has made a report.

14 And -- and, your Honor, I would ask that the -- the
15 Motion for Disqualification be denied.

16 Thank you.

17 THE COURT: Ms. Ostrander, do you wish to make any
18 statement on the issue?

19 MS. OSTRANDER: Briefly.

20 Your Honor, in summary, I would concur with
21 Ms. Benedict.

22 I believe that Ms. Benedict was operating under
23 exigent circumstances. We had a young girl who was being
24 removed from the State of Michigan against her wishes. She was
25 in the process of seeking legal advice.

1 I know from talking with her that she talked to not
2 one attorney, but two attorneys.

3 However, she considered Ms. Benedict her attorney.

4 Time did not allow for formal -- formal pleadings to
5 be prepared. In fact, the Defendants made it impossible for
6 their daughter to proceed with her wishes to go to the court to
7 seek her remedy.

8 Ms. Benedict didn't have time to get verified -- or
9 to prepare verified proceedings, or to -- to file formal
10 affidavits.

11 I believe that in light of the exigent circumstances,
12 her actions were appropriate. The Court's actions were
13 appropriate.

14 And, quite frankly, I have never known Ms. Loomis to
15 have any great deal of influence in anybody in -- on any
16 person, judge, or office in this building. She is merely a
17 clerk.

18 So I would respectfully ask that the motion be
19 denied.

20 MR. MARCH: May I respond, your Honor?

21 THE COURT: You may.

22 MR. MARCH: Your Honor, Ms. Benedict says that what
23 this case is about is the best interests of the Plaintiff and,
24 ultimately, I would add, the Ryan family. And that's true,
25 ultimately.

1 But that's not what this motion is about.

2 What this motion is about is the integrity of the
3 judicial process. Whatever else we are here today, this is a
4 court of law. And the Court and Counsel are obligated to
5 follow the requirements of law.

6 In this particular case, Ms. -- Ms. Benedict says
7 that this is merely an effort to overwhelm people with
8 paperwork. She talks about personal attacks on her as an
9 attorney. I don't know anything about that.

10 The -- the material that is in our papers is all
11 there for a purpose. It's not meant to overwhelm anyone with
12 its volume. It is meant to specifically put forth the facts
13 and the law behind this motion. And we believe it does.

14 And I've heard nothing from Ms. Benedict nor from
15 Ms. Ostrander that in any way attacks the factual basis for our
16 motion.

17 Ms. McGinn-Loomis may or may not have ultimate
18 influence with this Court.

19 But I think it is beyond question that if somebody
20 off the street walked in and said, Judge, I want to be heard on
21 an ex-parte motion, I don't know of any judge, I do not know
22 Your Honor, I've not had personal experience with you, but in
23 28 years, I don't know of any judge who would say, yes, come on
24 in and I'll hear what you have to say.

25 The difference is that here Ms. McGinn-Loomis is an

1 employee of this court. And regardless of anything else,
2 regardless of Ms. Ostrander's verification and attesting to
3 Ms. McGinn-Loomis, it is the appearance that we're dealing with
4 here. And the appearance of impropriety is overwhelming, and
5 the appearance of bias.

6 I have no idea, as I've said already twice, whether
7 the Court, in fact, has a bias or a prejudice.

8 But what has happened here, through whatever
9 circumstances, and I am willing to believe everything the Court
10 did was well-intended. I'm willing to believe that everything
11 Counsel did was well-intended.

12 I'm not willing to make that same statement in
13 reference to Ms. McGinn-Loomis.

14 There is a question, well, no judge can hear this
15 case because she works in this courthouse.

16 I would say no judge who Ms. McGinn-Loomis has gone
17 to and talked to about this case can hear it. But absent that,
18 any of the other circuit judges can hear this case.

19 Ms. Benedict says, well, Mr. Ryan, because he's an
20 attorney, therefore, all the judges are disqualified.

21 The significant difference is that Mr. Ryan has not
22 had an ex-parte communication with Your Honor or with any other
23 judge.

24 You put this all together and this is -- this is a
25 motion that has merit and that Your Honor should disqualify

1 herself from hearing this case.

2 THE COURT: Thank you. The Court will enter its
3 ruling on the record. I do reserve the right to modify the
4 opinion as to information, law, and court rules as may be
5 applicable.

6 * * *

7 (Edited Opinion of the Court)

8 * * *

9 To file a Motion to Disqualify a judge is very
10 serious business. Judges are elected officials that serve and
11 are required to be impartial hearers of the facts.

12 In this case, the Court will detail its contacts with
13 Adele Loomis, with whom the Court has had, throughout its
14 tenure on the bench, little to no contact. She's not a friend.
15 She's not an acquaintance, she's a person who works in the
16 clerk's office.

17 I did receive a telephone call from Ms. Loomis at my
18 home over the dinner hour on September 19th.

19 The length of the conversation I would estimate to be
20 no more than two minutes.

21 The discussion was primarily to apologize for
22 interrupting me at home and to request whether my home number
23 could be provided to Ms. Benedict.

24 She further indicated that she was aware of the case
25 as Claire Ryan's boyfriend's mother.

1 That was the extent of my conversation. A brief
2 conversation to advise me of an alleged emergency situation and
3 whether Ms. Benedict could receive my home number.

4 Emergencies and ex-parte orders are in and of
5 themselves problematic. That is why the bench rarely issues
6 them and attorneys in our legal community are sensitive to the
7 fact that they should be brought only in the most severe of
8 emergency situations. Ex-parte orders by their nature require
9 ex-parte communication. These communications do not disqualify
10 the judge from hearing the case. The other information from
11 Ms. Loomis which I received include reviewing an affidavit
12 dated September 20th, submitted by Ms. Benedict, and also an
13 affidavit that was submitted to the Court in the context of
14 receiving a PPO against Mr. Ryan and Mrs. Ryan.

15 This Motion for Disqualification is requested
16 pursuant to MCR 2.003(1), alleging the judge is personally
17 biased or prejudiced for or against a party or attorney.

18 Ms. Loomis is not a party to the action. She is not
19 a collateral party in that there has never been a request in
20 any pleading that I have reviewed to place Claire Ryan with
21 Ms. Loomis. No one suggests or requests the placement of
22 Claire Ryan with Ms. Loomis.

23 There is no order for temporary placement with
24 Ms. Loomis nor has one ever been requested.

25 In fact, all parties agree, the Ryans, Claire Ryan's

1 attorney, and the Guardian Ad Litem, that such a placement
2 would be inappropriate.

3 One must then look to the orders that the Court
4 entered to determine if the two-minute phone conversation
5 authorizing Ms. Benedict to contact me at home for the
6 presentation of an emergency ex-parte order influenced the
7 Court for Ms. Loomis, although she's not a party, or against
8 the Ryans in any way.

9 The order entered by the Court on September 19th
10 preserved the status quo. It was intended to preserve the
11 child's jurisdiction within the State of Michigan, to return
12 the child to Grand Rapids in a safe location at the Bridge, and
13 to schedule an emergency hearing.

14 The Court didn't rule against the Ryans, it didn't
15 rule against Claire Ryan, it ruled for no one. It ruled to
16 preserve the status quo when emergency allegations had been
17 made that the child was to be removed from a jurisdiction when
18 she sought to bring forward an emancipation petition,
19 guardianship hearing, or other proceedings.

20 The ex-parte order preserved the status quo to allow
21 the parties to be heard.

22 Could this possibly have the appearance of prejudice
23 or bias to preserve the status quo?

24 The Court finds that no appearance of impropriety,
25 bias or prejudice exists in the issuance of an order to

1 maintain the status quo, and to schedule an emergency hearing.

2 The second order entered by the Court appointed a
3 guardian ad litem for Claire Ryan, Attorney Judy Ostrander.

4 Could the two-minute conversation with Ms. Loomis to
5 pass on a home number, or the reviewing of the affidavits in
6 any way have an impact on the Court's order to appoint a
7 guardian ad litem to determine the child's position in the case
8 in order to rule on the Motion to Dismiss, the motion to move
9 Claire Ryan back to Michigan, and the motion for release of
10 records that was to be before the Court?

11 The Court finds that there is no appearance of
12 impropriety, bias, or prejudice to any party in ordering that a
13 guardian ad litem be appointed for the child before ruling on
14 the substantive issues and matters before the Court.

15 The second order also stayed the ex-parte order
16 requiring the return of Claire Ryan to Grand Rapids from the
17 Detroit Metropolitan area.

18 Now could there be any appearance of impropriety as a
19 result of that phone call in the staying of that order, which
20 also expanded the preservation of the status quo, since, in
21 fact, Claire Ryan had been moved into a placement in Utah?

22 This was a request, in fact, made by the Ryans.

23 I find that there is no appearance of impropriety in
24 entering this stay allowing Claire Ryan to remain in her
25 placement and preserving the current status quo until the

1 guardian ad litem report was received, heard, and the motions
2 were argued.

3 The Court finds that there is no personal bias and
4 there further is no appearance of bias or prejudice in this
5 matter or in the orders that have been generated by the Court.

6 In fact, if there was bias or the appearance of bias,
7 that would have been supported if I had signed a second ex-
8 parte order presented by Ms. Benedict requesting that I order
9 the child to be returned from Utah.

10 The Court declined to sign that ex-parte order.

11 The Court also declined to sign an ex-parte order
12 submitted by Mr. Saxe dismissing the action.

13 Would the argument for the appearance of impropriety
14 or the appearance of bias or prejudice be bolstered if the
15 Court had entered the PPO requested by Ms. Loomis against the
16 Ryans?

17 The Court declined to enter that order. And I would
18 argue because the Court is fair and impartial and considers
19 only the facts of the case, which have yet to be fully
20 presented to the Court.

21 I have yet to consider the substantive requests of
22 the respective parties.

23 The Court has only continued the status quo which has
24 not prejudiced either party.

25 It appears to the Court that the Motion for

1 Disqualification, filed one day before the hearing on the
2 substantive matters, was meant to further delay the case. This
3 case was presented to the Court of Appeals who declined to stay
4 the proceeding. A Motion to Dismiss is pending. I find the
5 Motion for Disqualification completely without merit. The
6 motion is denied.

7 The pleadings indicate that if this matter is to be
8 denied, there will be an appeal to the chief judge as allowed
9 by the court rule.

10 The Court, therefore, will adjourn argument on the
11 substantive matters, which were to be heard today, for one
12 week, Thursday, from 3:00, excuse me, October 24th, from
13 11:00 a.m. until noon. The pending motions include a request
14 for records, placement of Claire Ryan in Michigan, and motion
15 to dismiss, along with considering the guardian ad litem report
16 and recommendation.

17 I believe that this is more than enough time for you
18 to pursue the appeal to Judge Buth, since you are able to raise
19 this Motion to Disqualify in a very short period of time.

20 * * *

21

22 THE COURT: So the Court will adjourn until
23 October 24th, 2001, 11:00 a.m. to noon.

24 MS. BENEDICT: Your Honor, you said Thursday the
25 24th, but Thursday is the --

1 THE COURT: Is -- am I wrong?

2 MS. BENEDICT: -- Wednesday is the 24th.

3 THE COURT: Wednesday. I meant to just adjourn it
4 for one week, believing that that would be sufficient time for
5 the appeal to Judge Buth to proceed.

6 MR. MARCH: Your Honor, may I be heard?

7 THE COURT: Do you have a question?

8 MR. MARCH: I -- I have a question, then I have a
9 request.

10 You are correct that our papers indicate that should
11 Your Honor deny the motion, which you have, that we would ask,
12 pursuant to the court rule, that it be submitted to the chief
13 judge.

14 I would, however, like the opportunity to confer with
15 my clients, based on what the Court has said here today, before
16 we officially make that request.

17 I don't know if that impacts the Court's decision if
18 we were not to do that, so that you would proceed today or
19 whether in any event you're going to put it off for a week.
20 But I'd like to confer with -- with my clients for five
21 minutes, if we can do that.

22 THE COURT: You certainly may.

23 MR. MARCH: I would also like to state on the record,
24 your Honor, that there was no intent in filing this motion for
25 delay. The Court, obviously, disagrees with the -- the basis

1 for the motion.

2 But I'm representing to you as an officer of the
3 court that that was not filed for delay purposes.

4 THE COURT: Thank you. We'll adjourn for five to ten
5 minutes.

6 MS. BENEDICT: Thank you, your Honor.

7 THE COURT: Thank you.

8 (At 10:48 a.m., recess taken)

9 (At 10:59 a.m., court reconvened)

10 THE CLERK: All rise.

11 THE COURT: Please be seated.

12 MR. MARCH: Your Honor, I have conferred with my
13 clients and with co-counsel, and we have determined that we
14 will ask that this be submitted to Judge Buth.

15 As I read the court rule, sub-part (C) (3) (b), it
16 indicates that the court submits the challenge. And I'm not
17 sure, precisely, the procedure. But because we're under a very
18 short time period here, I think that we -- it probably behooves
19 us all to understand exactly what will happen in that regard.

20 It's been my previous experience, albeit limited,
21 that the challenged judge refers the matter to the chief judge.

22 I guess what I'm really asking is that we all be on
23 the same page in terms of what we do here.

24 THE COURT: I have never done this either. So, that
25 does appear to be the direction from the court rule.

1 The Court would be inclined to provide to Judge Buth
2 your appearance, motion, affidavits, the order of the Court,
3 and a transcript of the proceeding so that Judge Buth may
4 review the arguments of Ms. Benedict, Ms. Ostrander, and also
5 your own argument and rebuttal.

6 MR. MARCH: And the -- and the Court's opinion, I
7 think Judge Buth should have that.

8 THE COURT: Yes. Yes. Very well.

9 MR. MARCH: If that can -- can be done. And if
10 there's any question of that, we'll order that -- the
11 transcript of today's hearing.

12 THE COURT: I think that you do have -- are
13 responsible for paying for the transcript.

14 MR. MARCH: Yes. In any event, we will, your Honor,
15 because I think all that should be before Judge Buth.

16 THE COURT: All right. Very well.

17 MR. MARCH: And so if we can do that, we will assume
18 then that the Court will forward those papers. It is possible
19 that we will submit a supplemental brief in -- in light of what
20 the Court's statements were. The Court can imagine some of
21 that was unknown to us and no way we would have to know that.

22 So we will probably submit a supplemental brief which
23 will be served on Ms. Benedict, Ms. Ostrander, and also a
24 courtesy copy to Your Honor.

25 MS. BENEDICT: Your Honor, number one, I would object

1 to further evidence being presented.

2 The -- the issue -- from the -- the moving party
3 anyway. Certainly, I should be given a response -- a chance to
4 file a written response to it.

5 But I think for -- for the moving party to be able to
6 now come up with some other documents to file, I won't even be
7 given a chance to respond yet again for Judge Buth to hear it.

8 Either we set a parameter of response -- we've --
9 your Honor, I just don't think that the Court should allow more
10 responsive pleadings in regards to this issue, other than to
11 allow me to file an answer, given the untimeliness of -- of
12 this motion being filed for today.

13 Or -- or nobody files anything and we only use the
14 court record as it is.

15 MR. MARCH: With all respect, your Honor, I believe
16 that really is a matter for Judge Buth, who is now going to be
17 deciding this.

18 The -- I in no way am contesting Ms. Benedict's right
19 to file a response to our papers, which she did not have the
20 opportunity to do.

21 But there have been things that have been said by the
22 Court of a factual nature that are inconsistent with what is in
23 the record. And the Court has -- has stated reasons as to why,
24 in the Court's opinion, our motion was without merit.

25 We respectfully disagree and I think we should have

1 the opportunity to tell Judge Buth, putting all of this
2 together, why we think the motion should be granted.

3 THE COURT: Very well. I -- I will allow you to file
4 a supplemental response.

5 I did struggle with -- the Court intended to clarify
6 the one very brief communication, and I struggled -- well, you
7 know, was it appropriate to do that. For -- you make the
8 argument after -- and so I -- I made the decision to include
9 that in my remarks today.

10 That being the case, you -- you do have the right to
11 tell Judge Buth how you perceive that information and make
12 further argument.

13 That would certainly apply to the guardian ad litem,
14 if you wish. I'm not saying you need to. If you want to, you
15 may. And -- and I will pass that information along to Judge
16 Buth.

17 If there are any additional pleadings, they would
18 need to be submitted by Friday at 5:00, because the Court would
19 pass on the information to Judge Buth and ask that he have the
20 opportunity to consider it over the weekend, if he wishes to,
21 or Monday or Tuesday before this scheduled Wednesday hearing
22 date.

23 So I am going to allow for additional filings through
24 Friday at 5:00.

25 Actually, why don't I say Friday at 4:00. That way,

1 I'll have the chance to make sure that he receives it before
2 the close of the day.

3 MS. BENEDICT: Your Honor, I don't mean to beleaguer
4 the point, and I really don't mean to be a thorn. But I can
5 tell you what's going to happen. At 4:50 on Friday afternoon,
6 I'm going to get something served from them, and I won't have a
7 chance to respond. Just like what happened today. I mean, if
8 they're going to file something, can't I at least have a day to
9 respond to it?

10 MR. MARCH: I've --

11 THE COURT: No. I've -- I've ruled. All of you have
12 the information relative to the Motion for Disqualification,
13 the information, and I think each of you -- that there's not a
14 need for further responsive pleadings to each other's position.
15 But each of you can well articulate your own position on the
16 issue.

17 And I would like all pleadings submitted by Friday at
18 4:00.

19 MS. BENEDICT: Your Honor --

20 MR. SAXE: May it please the Court, your Honor? I
21 have two matters before the Court.

22 One is -- I've been remarkably silent today. I don't
23 want the Court to imply anything either against me or for me in
24 that matter except to say this. I was ready to proceed today.
25 Any implication that there's a delay tactic on my part or

1 Mr. Ryan's part, I think, is improperly placed by Ms. Benedict.
2 There's -- there's no reason for us to have delayed this other
3 than Mr. March's motion, which I think the delay then makes
4 sense.

5 The second thing is, before the Court came on the
6 bench, Ms. Ostrander presented a guardian ad litem report. And
7 before such time as there's some testimony to provide a -- a
8 foundation for that, I'd ask that that be returned to her and
9 taken from the court file until such time as that evidentiary
10 hearing begins.

11 Thanks.

12 THE COURT: The Court would deny that request. She's
13 been appointed as guardian ad litem. It's properly filed and
14 will remain in the court file.

15 MR. MARCH: Your Honor, just so I'm -- I'm clear.
16 Our briefs should be submitted to the -- to the Court, to Your
17 Honor, and then the whole package will go to Judge Buth as
18 opposed to us submitting the brief to Judge Buth?

19 THE COURT: Correct. As I understand the court rule,
20 I need to submit it to Judge Buth.

21 And, so I will prepare a cover letter saying that
22 there's been a challenge to my denial on the Motion for
23 Disqualification, I'm respectfully requesting that he review
24 it, and issue a de novo decision prior to our adjourned hearing
25 date.

1 And then I would enumerate the attachments, which
2 will be all pleadings associated with the motion, the
3 transcript, and any supplemental responses that you wish to
4 have Judge Buth receive, in light of the Court's comments
5 today.

6 Those need to be filed, an original with the clerk,
7 but I need the copies in my office because you understand
8 there's a delay.

9 MR. MARCH: Sure.

10 THE COURT: And so in order to properly have it
11 submitted to Judge Buth, which I understand is my
12 responsibility, I need copies in my office, in addition to the
13 clerk's office, by Friday at 4:00 so that those may be received
14 by him.

15 MR. MARCH: Thank you, your Honor.

16 THE COURT: All right. Anything else?

17 MS. BENEDICT: Thank you, your Honor.

18 MS. OSTRANDER: Thank you, your Honor.

19 MR. SAXE: Thank you, your Honor.

20 THE COURT: Thank you very much.

21 (At 11:08 a.m., court adjourned)

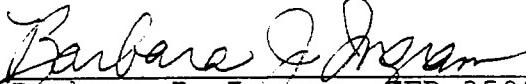
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STATE OF MICHIGAN)

) ss

COUNTY OF KENT)

I, Barbara J. Ingram, Official Court Reporter, certify that this transcript, consisting of 32 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on Wednesday, October 17, 2001.


Barbara J. Ingram, CER-3509
Official Court Reporter
616-632-5071

Dated: October 18, 2001
Grand Rapids, Michigan